

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
AUG 31 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHRISTOPHER C. VALVERDE,)
)
Petitioner Employee,)
)
v.)
)
THE INDUSTRIAL COMMISSION OF)
ARIZONA,)
)
Respondent,)
)
TUCSON PROFESSIONAL)
LANDSCAPING, INC.,)
)
Respondent Employer,)
)
SCF ARIZONA,)
)
Respondent Insurer.)
_____)

2 CA-IC 2011-0005
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20072220568

Insurer No. 0727867

Honorable Deborah P. Hansen, Administrative Law Judge

AWARD AFFIRMED

Christopher Valverde

Coolidge
In Propria Persona

The Industrial Commission of Arizona
By Andrew F. Wade

Phoenix
Attorney for Respondent

SCF Arizona
By James B. Stabler and Joseph N. Lodge

Tucson
Attorneys for Respondents
Employer and Insurer

V Á S Q U E Z, Presiding Judge.

¶1 In this statutory special action, petitioner Christopher Valverde challenges the administrative law judge’s (ALJ) denial of his petition to reopen his claim for workers’ compensation benefits. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Industrial Commission’s ruling. *Polanco v. Indus. Comm’n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). In January 2007, Valverde fell and broke his ankle in a work-related accident while employed by respondent, Tucson Professional Landscaping, Inc. (TPL). Valverde received medical treatment for his broken ankle and, after his condition was found to be medically stationary with no permanent disability, his workers’ compensation claim was closed in January 2008.

¶3 Valverde petitioned to reopen his claim in August 2010, and SCF Arizona, TPL’s insurer, denied the petition. Valverde then filed a request for a hearing before the Industrial Commission, claiming he was continuing to have pain in his ankle and that he also was having “back and shoulder problems” resulting from the industrial accident.

After a hearing in January 2011, the ALJ issued a decision upon hearing denying Valverde's petition to reopen. The ALJ concluded "a preponderance of the evidence in this matter supports [a] finding that [Valverde] has not sustained a new, additional or previously undiscovered industrially-related condition sufficient to support reopening of his claim." Valverde filed a Request for Review of that decision, and upon review the ALJ affirmed her earlier decision denying Valverde's request to reopen. This special action followed.

Standard of Review

¶4 "We deferentially review the ALJ's factual findings but independently review [her] legal conclusions." *Grammatico v. Indus. Comm'n*, 208 Ariz. 10, ¶ 6, 90 P.3d 211, 213 (App. 2004). The ALJ determines witness credibility, *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973), and resolves conflicts in the evidence, *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). "When more than one inference may be drawn, the [ALJ] may choose either, and we will not reject that choice unless it is wholly unreasonable." *Id.* The petitioner has the burden of proving that he has a compensable claim. *LaRue v. Indus. Comm'n*, 16 Ariz. App. 482, 483, 494 P.2d 382, 383 (1972).

Discussion

¶5 Preliminarily, Valverde's opening brief does not comply in any meaningful way with Rule 13, Ariz. R. Civ. App. P. The brief consists primarily of a recitation of the names and addresses of medical providers who have treated him and contains virtually no assertions of legally relevant facts or arguments. It lacks any statement of the issues

presented for review, statement of facts with appropriate references to the record, or argument with citations to authorities; nor does it articulate the proper standard of review. Valverde's failure to comply with the rules would justify our summary dismissal of his petition for special action review. *See In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) (court does not consider bare assertion offered without elaboration or citation to legal authority); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998) (same); *Allen v. Chon-Lopez*, 214 Ariz. 361, n.1, 153 P.3d 382, 384 n.1 (App. 2007) (statement of facts disregarded for failure to comply with Rule 7(e), Ariz. R. P. Spec. Actions); *see also* Ariz. R. P. Spec. Actions 10(k) (Arizona Rules of Civil Appellate Procedure apply to special action review of industrial commission awards).

¶6 Even though Valverde is a nonlawyer representing himself, he is held to the same standards as a qualified attorney. *See Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). Nonetheless, because we prefer to resolve cases on their merits, *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966), and because TPL has provided us useful guidance in its answering brief, we will attempt to discern and address the substance of Valverde's petition.

¶7 As best we understand his argument, Valverde contends he sustained his burden of proving he was entitled to have his claim reopened and asks this court to reverse the decision of the Industrial Commission for that reason. Valverde "has the burden to prove h[is] entitlement to reopen h[is] claim by showing a new, additional, or previously undiscovered condition and a causal relationship between that new condition

and the prior industrial injury.” *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, ¶ 17, 41 P.3d 640, 643-44 (App. 2002). “A change of condition may be shown by a change in the claimant’s causally related physical condition or a change in medical procedures necessary to treat a causally related condition.” *Id.* When the causal connection between the condition and the prior industrial injury is not readily apparent, it must be established by expert medical testimony. *Makinson v. Indus. Comm’n*, 134 Ariz. 246, 248, 655 P.2d 366, 368 (App. 1982).

¶8 Here, the ALJ determined the medical evidence did not support Valverde’s petition to reopen. At the hearing, Valverde testified he had injured his back and shoulder in the industrial accident and those injuries continued to be painful. He also testified he was continuing to have pain in his ankle. Despite Valverde’s testimony, the ALJ determined there was no medical evidence he was suffering from a “new, additional or previously undiscovered condition,” “causal[ly] relat[ed]” to Valverde’s prior injury. In reaching this conclusion, the ALJ noted that Valverde had never reported the back and shoulder injuries before his claim was closed. The ALJ also relied on the opinions of several independent medical examiners, all of whom determined Valverde’s back and shoulder pain were unrelated to the industrial injury. The record supports the ALJ’s findings. *See Johnson-Manley Lumber*, 159 Ariz. 10, 13, 764 P.2d at 748 (ALJ determines witness credibility and resolves conflicts in evidence).

¶9 The ALJ also concluded there was no basis to reopen Valverde’s claim for his ankle injury. Again, the ALJ based her decision on the opinions of the independent medical examiners who uniformly found the condition of Valverde’s ankle was “stable

and stationary.” Valverde’s testimony that he was continuing to experience pain, standing alone, was not sufficient evidence to reopen his claim. A claim shall not be reopened based on an employee’s “increased subjective pain if the pain is not accompanied by a change in objective physical findings.” A.R.S. § 23-1061(H); *see also Polanco*, 214 Ariz. 489, ¶ 6, 154 P.3d at 393.

¶10 On the record before us, we cannot say the ALJ abused her discretion in resolving the conflicting evidence against Valverde. *See Stainless Specialty Mfg. Co. v. Indus. Comm’n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985) (appellate court bound by ALJ’s resolution of conflicting testimony and will not disturb conclusion unless wholly unreasonable).

Disposition

¶11 For the reasons stated, we affirm the award.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge